

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5978 of 2017

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1. Srinivas Chandra Tiwary Son of Sri Bharat Prasad Tiwary, resident of E2/8 of
Sadhnepuri, P.S.-Gardanibagh, District-Patna Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education, Bihar, Patna
3. The Director, (Administration)-Cum-Additional Secretary, Department of
Education, Bihar, Patna Respondents

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Appearance :

For the Petitioner : Mr. Vinod Kumar Kanth, Sr. Adv. with
Mr. Prabhu Nath Pathak, Adv.
For the Respondents : Mr. Madanjeet Singh, GP XX

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 12-10-2017

Heard Mr. Vinod Kumar Kanth, learned senior counsel
appearing for the petitioner and Mr. Madanjeet Kumar Singh, GP XX,
appearing for the State.

2. With the consent of both the parties, this writ petition is
disposed off at the stage of admission, itself.

3. The petitioner, the then Secretary, Bihar School Education
Board and presently the Assistant Director, Mid Day Meal, has been put
under suspension vide order, dated 26.12.2016, as contained in Memo
No. 1056, by the Director Administration-cum-Additional Secretary,
Education Department, Government of Bihar.

4. Mr. Vinod Kumar Kanth, learned senior counsel appearing
for the petitioner, submits that in view of Section 9 of the Bihar
Government Servant (Classification, Control and Appeal) Rule, 2005,
(hereinafter referred to for the sake of gravity as, "CCA Rules, 2005),
says that the appointment authority or any authority to which the
appointing authority is subordinate or the disciplinary authority or any



other authority empowered in that behalf by the Government by general or special order, may place a government servant under suspension. Secondly, the disciplinary authority or any other authority empowered by general or special order may put a person under suspension contemplating a departmental proceeding, but, the Director neither the appointing authority nor the superior to the appointing authority nor the disciplinary authority of the petitioner has put the petitioner under suspension and, therefore, the order of suspension was issued by an officer not competent under the Rule 9 of the CCA Rules, 2005, and same is illegal.

5. The State of Bihar has filed counter affidavit, but, vide order, dated 07.09.2017, the State of Bihar was directed to file specific reply to the question whether the Director Administration is competent authority to place the petitioner under suspension, but, no specific reply is given in the entire counter affidavit.

6. Mr. Madanjeet Kumar Singh, learned Government Pleader XX, has very fairly submitted that the Director Administration is not competent authority as he is neither the appointing authority nor the disciplinary authority of the petitioner.

7. Having considered the facts and the submissions of both the sides, I find that the Director Administration-cum-Additional Secretary, Education Department, Government of Bihar, is not the competent authority to put the petitioner under suspension and the order is, thus, without jurisdiction. By supplementary affidavit the memo of charge is also served on the petitioner by the Secretary, the Bihar School Examination Board, who is also not competent under the Rules as



he is neither a disciplinary authority nor the appointing authority of the petitioner.

8. Accordingly, Annexure 1 (Memo No. 1056, dated 26.12.2016), issued by the Director Administration-cum-Additional Secretary, Education Department, Government of Bihar, and the orders, as contained in Annexure 6 (A) and (B), issued by the Secretary, the Bihar School Examination Board, are **set aside** and the writ petition is **allowed**.

9. The disciplinary authority, if so desires, may proceed further in accordance with law.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.10.2017
Transmission Date	N/A

